

REMARKS

Claims 27-31 currently are pending in the present application.

The present Office Action asserts that no claims to the elected invention (of Group II) are currently pending in the application.

All claims recite a kit comprising "(1) a lyophilized stannous ion formulation which comprises said stannous ion and an anion, (2) carbon monoxide and (3) a metal M selected from the group consisting of Mn, ^{99m}Tc, ¹⁸⁶Re and ¹⁸⁸Re." All kits of all pending claims therefore comprise the "combination of components" defining the kit of claim Group II (claims 27-32, drawn to a kit comprised at a minimum of a "stannous ion" in combination with "an anion" and a metal which is "technetium" or "rhenium." See Office Action dated October 21, 2003, page 2.

The reasons given in the Office Action for the assertion that no claims are drawn to the elected invention are: (1) the election of Group II was made without traverse; (2) the claims to the non-elected invention were canceled; (3) Applicants did not earlier argue that claim 26 should have been included in Group II; (4) the recitation of "carbon monoxide" in the preamble of

claim 27 does not bear on the claimed components of the kit of claim 27; and (5) the potential uses of the kit do not bear on patentability of the kit. None of these reasons discuss the recitation in all claims of stannous ion, an anion and a metal. The Office appears to assert that addition of a further limitation (carbon monoxide) to the combination of components recited using open language to define the claim group renders the claim part of another group that requires stannous ion, an anion and carbon monoxide, but not a metal. Applicants strongly disagree with this assertion.

The elected invention as defined by the Office, is a kit comprising "at a minimum," stannous ion, an anion and a metal. The definition employs open claim language and therefore permits additional components to those recited. The Office has requested that Applicants "reinstate" claims directed to a kit comprising stannous ion, an anion and a metal. All claims of the application recite stannous ion, an anion and a metal and therefore are directed to a kit comprising stannous ion, an anion and a metal.


However, to allow prosecution of this application to move forward at this time, Applicants have added new claims 33-37 herein. These claims also recite a kit comprising stannous ion,

an anion and a metal, and are supported by the specification as filed, new independent claim 33 being of comparable scope to claim 27 as presented with the application upon filing. No new matter is added.

Applicants respectfully request entry of the amendments contained herein and examination of the claims on the merits.

Respectfully submitted,

By



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